

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHARON NESS, individually,  
  
Plaintiff,

NO. C10-5111 FDB

vs.

DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES

LAW ENFORCEMENT SUPPORT  
AGENCY (LESA); PIERCE COUNTY;  
CITY OF TACOMA; DIANA LOCK;  
individually and in her personal  
capacity as assistant director for  
LESA communications; KELLY  
BOCHENSKI, individually and in her  
personal capacity as administrative  
assistant director for LESA  
communications; JOHN PIRAK,  
individually and in his personal  
capacity as director of LESA  
communications; TOM ORR,  
individually and in his personal  
capacity as director of LESA  
communications; JODI MAIER,  
individually and in her personal  
capacity as schedule supervisor for  
LESA communications,

Defendants.

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1 COME NOW the defendants in above-captioned action, by and through  
2 their attorneys of record, and by way of answer to plaintiff's complaint, admit,  
3 deny, and allege as follows:

4 **I. STATEMENT OF THE CASE**

5 In answer to this section of plaintiff's complaint, defendants assert that  
6 this paragraph contains only legal assertions to which no responsive pleading is  
7 required.

8 **II. JURISDICTION AND VENUE**

9 2.1 In answer to paragraph 2.1 of plaintiff's complaint, defendants  
10 admit that this court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C.  
11 §1331 and §1367. As to the remaining allegations contained herein, the  
12 defendants deny the same.

13 2.2 In answer to paragraph 2.2 of plaintiff's complaint, defendants  
14 admit the same.

15 **III. PARTIES**

16 3.1 In answer to paragraph 3.1 of plaintiff's complaint, defendants  
17 admit the same.

18 3.2 In answer to paragraph 3.2 of plaintiff's complaint, defendants  
19 deny that defendant LESA is a local agency subject to liability under 42 U.S.C.  
20 § 1983. As to the remaining allegations contained in paragraph 3.2, defendants  
21 admit the same.

22 3.3 In answer to paragraph 3.3, defendants admit that defendant  
23 Pierce County is a political subdivision of the State of Washington authorized to

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1 do business in the State of Washington and doing business in the State of  
2 Washington under color of state law. As to the remaining allegation in  
3 paragraph 3.3, defendants deny that all acts of its employees are the acts of the  
4 County.

5 3.4 In answer to paragraph 3.4 of plaintiff's complaint, defendants  
6 admit the same.

7 3.5 In answer to paragraph 3.5 of plaintiff's complaint, defendants  
8 admit that defendant Lock is an Assistant Director and directly responsible for  
9 the 911 Call Center. Defendants deny any misconduct by defendant Lock. As  
10 to the remaining allegations contained herein, the defendants assert that these  
11 are only legal assertions to which responsive pleadings are not required. If  
12 responsive pleadings are deemed required, defendants deny the same.

13 3.6 In answer to paragraph 3.6 of plaintiff's complaint, defendants  
14 admit that defendant Bochenski is an Assistant Director and directly responsible  
15 for medical requests by LESA employees. Defendants deny any misconduct by  
16 defendant Bochenski. As to the remaining allegations contained herein, the  
17 defendants assert that these are only legal assertions to which responsive  
18 pleadings are not required. If responsive pleadings are deemed required,  
19 defendants deny the same.

20 3.7 In answer to paragraph 3.7 of plaintiff's complaint, defendants  
21 admit that defendant Pirak is the former Director of LESA and that he was  
22 directly responsible at the time for overseeing all aspects of LESA. Defendants  
23 deny any misconduct by defendant Pirak. As to the remaining allegations  
24  
25

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1 contained herein, the defendants assert that these are only legal assertions to  
2 which responsive pleadings are not required. If responsive pleadings are  
3 deemed required, defendants deny the same.

4 3.8 In answer to paragraph 3.8 of plaintiff's complaint, defendants  
5 deny that defendant Jodi Maier is the scheduling supervisor for LESA but admit  
6 she is designated as a supervisor, whose duties include scheduling LESA  
7 Communications employees and coordinating work shifts. Defendants deny  
8 any misconduct by defendant Maier. As to the remaining allegations contained  
9 herein, the defendants assert that these are only legal assertions to which  
10 responsive pleadings are not required. If responsive pleadings are deemed  
11 required, defendants deny the same.

12 3.9 In answer to paragraph 3.9 of plaintiff's complaint, defendants  
13 admit that defendant Tom Orr is the current director of LESA, but deny that  
14 defendant Orr is the current director of only LESA Communications.  
15 Defendants deny any misconduct by defendant Orr. As to the remaining  
16 allegations contained herein, the defendants assert that these are only legal  
17 assertions to which responsive pleadings are not required. If responsive  
18 pleadings are deemed required, defendants deny the same.

19 3.10 In answer to paragraph 3.10 of plaintiff's complaint, defendants  
20 admit the same.

#### 21 **IV. STATEMENT OF FACTS**

22 4.1 In answer to paragraph 4.1 of plaintiff's complaint, defendants  
23 admit the same.

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1           4.2    In answer to paragraph 4.2 of plaintiff's complaint, defendants are  
2 without knowledge or information sufficient to form a belief as to the truth of the  
3 allegations contained therein, and therefore, deny the same.

4           4.3    In answer to paragraph 4.3 of plaintiff's complaint, defendants are  
5 without knowledge or information sufficient to form a belief as to the truth of the  
6 allegations contained therein, and therefore, deny the same.

7           4.4    In answer to paragraph 4.4 of plaintiff's complaint, defendants  
8 admit that on April 20, 2004, a meeting was held in which defendant John Pirak,  
9 LESA Director at the time, and defendant Diana Lock, Assistant Director, were  
10 present. Also present were Angela Hardy from the City of Tacoma's Human  
11 Resources Department, union representative Kim Sirianni, and on information  
12 and belief, Ann Mueller, an IT representative. Defendants admit that during the  
13 meeting, plaintiff requested she be provided a typewriter. Defendants admit  
14 that plaintiff provided a note from her physician, but deny that the physician's  
15 note indicated that any accommodations for her condition were required to  
16 enable her to perform the essential functions of her position. As to the  
17 remaining allegations contained in paragraph 4.4, defendants deny the same.  
18

19           4.5    In answer to paragraph 4.5 of plaintiff's complaint, defendants  
20 admit that plaintiff met with defendants Bochenski and Lock and her union  
21 representative Mark Manning in January 2009 to discuss plaintiff's request for  
22 accommodations. As to the remaining allegations in paragraph 4.5, defendants  
23 deny the same.  
24

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1           4.6     In answer to paragraph 4.6 of plaintiff's complaint, defendants  
2 admit the same.

3           4.7     In answer to paragraph 4.7 of plaintiff's complaint, defendants  
4 admit there are multiple shifts at LESA Communications, including, but not  
5 limited to day, swing and graveyard. Defendants admit the swing shift hours  
6 are from 3:00 p.m. to 11:00 p.m., 3:00 p.m. to 1:00 a.m., and 5:00 p.m. to 3:00  
7 a.m. Defendants admit that LESA employees annually "bid" for the shift they  
8 want to work the following year. Defendants deny that once an employee  
9 successfully bids for swing shift, that employee rotates only among the three  
10 different time slots for swing shift. With regards to the remaining allegations  
11 contained in paragraph 4.7, the defendants are without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations contained  
13 therein, and therefore, deny the same.  
14

15           4.8     In response to paragraph 4.8 of plaintiff's complaint, the  
16 defendants deny that the "barrel" shift is "in addition to" the regular shifts and  
17 assert that the "barrel" shift is a regular shift. With regards to the remaining  
18 allegations contained in paragraph 4.8, defendants admit the same.

19           4.9     In response to paragraph 4.9 of plaintiff's complaint, defendants  
20 admit that on or about May 20, 2008, plaintiff provided a note from her doctor  
21 which indicated plaintiff needed to be on a regimented medication and sleep  
22 schedule to control her tremors, and plaintiff requested an accommodation  
23 allowing her to work only the swing shift. Defendants admit that they  
24 temporarily accommodated plaintiff's request to limit her to work hours to the  
25

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1 swing shift and temporarily excused plaintiff from assignment to the barrel shift  
2 until the accommodation request could be formally addressed. As to the  
3 remaining allegations contained in paragraph 4.9, defendants deny the same.

4 4.10 In response to paragraph 4.10 of plaintiff's complaint, defendants  
5 admit that plaintiff's physician provided an ADA Request which outlined that  
6 plaintiff required a regimented medication and sleep schedule and that her  
7 doctor requested that she be scheduled to work only the swing shift time slots.  
8 The defendants deny that plaintiff's physician recommended a communication  
9 device or stated that such a device was necessary as a reasonable  
10 accommodation, but admit that he requested she be provided with a  
11 communication device.  
12

13 4.11 In response to paragraph 4.11 of plaintiff's complaint, defendants  
14 deny the same.

15 4.12 In response to paragraph 4.12 of plaintiff's complaint, defendants  
16 are without knowledge or information sufficient to form a belief as to the truth of  
17 the allegations contained therein, and therefore, deny the same.

18 4.13 In response to paragraph 4.13 of plaintiff's complaint, defendants  
19 admit that plaintiff filed a complaint with the Equal Employment Opportunity  
20 Commission and the Human Rights Commission. As to any remaining  
21 allegations contained in paragraph 4.13, defendants deny the same.  
22

23 4.14 In response to paragraph 4.14 of plaintiff's complaint, defendants  
24 admit that plaintiff's work performance has been, for the most part, acceptable.  
25 Defendants admit that there have been occasions where supervisors unaware  
26

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1 of plaintiff's shift restrictions have called to see whether plaintiff would be  
2 available to work an extra shift. As to the remaining allegations contained in  
3 paragraph 4.14, defendants deny the same.

4 4.15 In response to paragraph 4.15 of plaintiff's complaint, on  
5 information and belief, defendants admit the same.

6  
7 **V. CAUSES OF ACTION**

8 **First Cause of Action - Discrimination**

9 5.1 In answer to paragraph 5.1 of plaintiff's complaint, defendants  
10 deny the same.

11 5.2 In answer to paragraph 5.2 of plaintiff's complaint, defendants  
12 deny the same.

13  
14 **Second Cause of Action – Intentional and Negligent Infliction of**  
15 **Emotional Distress**

16 5.3 In answer to paragraph 5.3 of plaintiff's complaint, defendants  
17 deny the same.

18 **Third Cause of Action – RCW 49.60**

19 5.4 In answer to paragraph 5.4 of plaintiff's complaint, defendants  
20 deny the same.

21 **Fourth Cause of Action – Violation of 42 U.S.C. § 1983 and State**  
22 **Constitution**

23  
24 5.5 In answer to paragraph 5.5 of plaintiff's complaint, defendants  
25 deny the same.

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1           5.6     In answer to paragraph 5.6 of plaintiff's complaint, defendants  
2 deny the same.

3           5.7     In answer to paragraph 5.7 of plaintiff's complaint, defendants  
4 deny the same.

5           5.8     In answer to paragraph 5.8 of plaintiff's complaint, defendants  
6 admit that defendant Orr has final decision making authority in his capacity as  
7 Director of LESA, but deny that defendant Orr failed to accommodate plaintiff's  
8 schedule and equipment requests. Defendants deny that defendant Lock had  
9 final decision making authority. As to any remaining allegations contained in  
10 paragraph 5.8, defendants deny the same.

11           5.9     In answer to paragraph 5.9 of plaintiff's complaint, defendants  
12 deny the same.

13           5.10    In answer to paragraph 5.10 of plaintiff's complaint, defendants  
14 deny the same.

15           5.11    In answer to paragraph 5.11 of plaintiff's complaint, defendants  
16 deny the same.

17  
18                   **AFFIRMATIVE DEFENSES**

19           6.1     FOR FURTHER ANSWER AND BY WAY OF AN AFIFRMATIVE  
20 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants state that there is  
21 no causation between the acts alleged as against these defendants and the  
22 damages claimed to have been sustained by the plaintiff.

23           6.2     FOR FURTHER ANSWER AND BY WAY OF AN AFIFRMATIVE  
24 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that, with  
25

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1 respect to some or all of the claims asserted, plaintiff has failed to state a claim  
2 upon which relief can be granted.

3 6.3 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL  
4 AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, defendants allege,  
5 based on information and belief and for purposes of avoiding waiver, that  
6 plaintiff has failed to mitigate her damages.

7 6.4 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
8 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants assert that, at all  
9 times relevant thereto, defendants demonstrated good faith efforts, in  
10 consultation with plaintiff, to identify and make reasonable accommodations  
11 that would provide plaintiff with an equally effective opportunity and would not  
12 cause an undue hardship on the operation of LESA Communications.  
13

14 6.5 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
15 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants assert that plaintiff  
16 failed to engaged in the interactive process in good faith and that therefore, her  
17 claims are not ripe.

18 6.6 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
19 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants assert that shift  
20 requirements for LESA employees are job related and consistent with business  
21 necessity.  
22

23 6.7 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL  
24 AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the individually  
25

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1 named defendants allege that they are immune from some or all of the claims  
2 herein pursuant to the doctrine of qualified immunity.

3 6.8 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
4 DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant City of Tacoma  
5 alleges that plaintiff's allegations or claimed constitutional deprivations under 42  
6 USC § 1983 are expressly and/or implicitly premised upon a theory of derivative  
7 and/or respondeat superior liability and the defendant City of Tacoma is  
8 immune from suit on that basis.

9 6.9 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
10 DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant Pierce County alleges  
11 that plaintiff's allegations or claimed constitutional deprivations under 42 USC §  
12 1983 are expressly and/or implicitly premised upon a theory of derivative and/or  
13 respondeat superior liability and the defendant Pierce County is immune from  
14 suit on that basis.

15 6.10 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
16 DEFENSE TO PLAINTIFF'S COMPLAINT, the defendants assert that some or  
17 all of certain claims are barred by the applicable statute of limitations.  
18

19 6.11 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL  
20 AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants  
21 reserve the right to assert additional affirmative defenses, including  
22 counterclaims and third-party complaints, as further information becomes  
23 known.  
24

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1 WHEREFORE, having fully answered plaintiff's complaint, defendants  
2 pray for judgment as follows:

3 1. For judgment ordering that plaintiff's complaint against answering  
4 defendants be dismissed with prejudice and with costs and actual attorney's  
5 fees awarded to these defendants.

6 2. For judgment awarding these defendants any and all available  
7 relief, including, but not limited to, their costs and reasonable attorney's fees  
8 pursuant to 42 U.S.C. § 1988.

9 3. For such other and further relief as the Court deems just and  
10 equitable.

11 DATED this 8th day of April, 2010.

12 ELIZABETH A. PAULI, City Attorney

13 By: Jean Homan

14 JEAN HOMAN  
15 WSB #27084  
16 Deputy City Attorney  
17 Of Attorneys for Defendants

18 By: Jennifer J. Taylor

19 JENNIFER J. TAYLOR  
20 WSB #26607  
21 Assistant City Attorney  
22 Of Attorneys for Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that on 4-8-10, I electronically filed, through my staff, the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Wayne C. Fricke, attorney for plaintiff.



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